

Opinions, Advice, and Legislation Quarterly News

Office of the
Maryland Attorney General



July-September 2002

OPINIONS

BALTIMORE CITY – EFFECT OF VOTER APPROVAL OF IRRECONCILABLE CHARTER AMENDMENTS

Question: If several conflicting amendments to reduce the size of the Baltimore City Charter appear on the ballot and are all approved by the voters, which proposed amendment would prevail?

Answer: If several irreconcilable charter amendments concerning the composition of the City Council were placed on the ballot, and more than one received a majority of votes, then all proposals that were approved by the voters would fail.

*Opinion No. 02-009
July 18, 2002*

COUNTY ATTORNEYS – WHETHER LAWYERS IN COUNTY ATTORNEY’S OFFICE MAY ACT AS ADVISER TO ADMINISTRATIVE TRIBUNAL AND ADVOCATE BEFORE SAME TRIBUNAL

Question: Would it be a “conflict of interest” for one attorney from the Office of the County Attorney to represent a county official or agency in an administrative appeal before the County Board of Appeals while another attorney from that Office advises the Board of Appeals?

Answer: An attorney in the County Attorney’s Office may represent a county official or agency before the Board of Appeals while another attorney in the same Office serves as counsel to the Board. However, procedures

should be employed to separate the two roles and to ensure the fairness of proceedings before the Board.

*Opinion No. 02-012
August 27, 2002*

HANDGUNS – INTEGRATED MECHANICAL SAFETY DEVICE

Question: Handguns manufactured after December 31, 2002 must contain an “integrated mechanical safety device” as a prerequisite to sale or transfer in Maryland. What types of handgun safety mechanisms meet that criterion, and is the Handgun Roster Board to determine whether a particular device satisfies the requirement?

Answer: The Maryland Regulated Firearms Law defines the phrase “integrated mechanical safety device” as a “disabling or locking device that ... is built into a handgun and ... is designed to prevent the handgun from being discharged unless the device has been deactivated.” This term applies to technology that is built into a gun and is designed to prevent the gun from being readily fired by a child or other unauthorized user. The provision was designed to enhance the safety of handguns and, accordingly, requires safety devices not already incorporated in most guns at the time the provision was added to the law in 2000. The Handgun Roster Board is the appropriate administrative agency to assess whether particular handguns and safety technologies satisfy the requirement.

*Opinion No. 02-010
July 19, 2002*

**HOME RULE COUNTIES –
REGULATION OF SMOKING IN
PRIVATE HOMES**

Question: Could a county ordinance concerning air quality validly restrict the smoking of tobacco inside a private residence, or on the deck or porch of an apartment or townhouse, if a harmful or offensive quantity of the smoke “crossed property lines and offended neighbors”?

Answer: Yes. This kind of legislation, although controversial, would be within the police power of a charter county, if it were designed to protect the public health or welfare.

*Opinion No. 02-016
September 23, 2002*

**INCOME TAXATION)
DEDUCTION FOR CONTRIBUTION TO
MARYLAND HIGHER EDUCATION
INVESTMENT PLAN**

Question: What is the maximum deduction that a Maryland taxpayer may take with respect to annual contributions to the Maryland College Investment Plan for a single beneficiary?

Answer: While the statutory language may be susceptible to different interpretations, the legislative history makes clear that the General Assembly contemplated that this deduction would be limited to \$2,500 per year per beneficiary.

*Opinion No. 02-013
September 9, 2002*

**MUNICIPAL ANNEXATION –
LAND IN ADJACENT COUNTY**

Question: May a municipal corporation annex land located in an adjacent county?

Answer: Yes.

*Opinion No. 02-015
September 23, 2002*

**PUBLIC SCHOOLS –
ZONING AND PLANNING**

Question: Is real property, owned by the Board of Education of Montgomery County and located within the boundaries of the City of Rockville, subject to the planning, zoning, and historic preservation authority of the City?

Answer: The Board of Education is a State agency in connection with the ownership and use of its real property for school purposes. Accordingly, Board property is generally not subject to Rockville’s zoning, subdivision, and historic preservation ordinances. However, the City has some planning jurisdiction over all land within its boundaries, and in particular, has authority to review many public projects constructed within the City, including school projects of the Board. In addition, State law restricts the Board of Education’s use, development, and disposition of school property.

*Opinion No. 02-011
August 14, 2002*

**VEHICLE LAWS –
ALCOHOL-RELATED OFFENSES)
BLOOD OR BREATH SAMPLE**

Question: If a motorist is involved in a fatal or life-threatening accident, are law enforcement officers authorized to use force to obtain a blood or breath sample?

Answer: Because blood or breath testing is compulsory, the implication is that law enforcement officers may use force if necessary. The use of force is subject to the constitutional requirement that it be objectively reasonable.

*Opinion No. 02-014
September 12, 2002*

ADVICE LETTERS

ADOPTION LEAVE

Labor and Employment Article §3-802 requires that a Maryland employer who provides leave with pay to an employee following the birth of a child provide the same leave with pay to an employee when a child is placed with the employee for adoption.

Question: Does this provision require that leave provided by disability benefits, based on the individual medical condition of a birth mother, be extended to adopting parents? If so, could that leave be restricted to adopting mothers?

Answer: No; to the extent that disability benefits are based on the individual medical condition of a birth mother, they would not have to be provided to adoptive parents. However, if a certain period of disability leave is granted to every birth mother regardless of individual medical condition, equivalent leave must be granted to adoptive parents. Restricting leave to adopting mothers only would risk violating Title VII of the Civil Rights Act of 1964.

*Letter to
Ms. Cynthia J. Ladd
July 31, 2002*

CHILD ABUSE REPORTING

Family Law Article §§5-704 and 5-705 require that health practitioners, police officer, educators, human services workers, and others report child abuse and neglect. Section 5-705(a)(3) provides an exemption for clergy if such a report would disclose certain confidential communications.

Question: To what extent does this exemption affect the reporting of misconduct between clergy and child victims?

Answer: Because the exemption is extremely narrow, it likely has little effect on the reporting of misconduct between clergy and child victims. Moreover, misconduct between clergy and child victims might not fall within the definition of abuse and therefore might not be subject to the reporting requirement.

*Letter to Del. Sheila Ellis Hixson
August 21, 2002*

Question: Does a person who suspects that a child is the subject of sexual abuse have the duty to report the sexual offense to authorities?

Answer: There is no legal duty to report a sexual offense against a child if the offense does not fall within the definition of "abuse" in Family Law Article §5-701(b). Therefore, the law does not require the reporting of sexual offenses committed by persons who are not parents, family or household members, or persons in responsible charge of a child victim.

*Letter to
Delegate Carol S. Petzold
August 5, 2002*

ELECTRONIC MAIL REGULATION

Utah and West Virginia have enacted statutes regulating the use of electronic mail, including sexually explicit e-mail. Somewhat similarly, Chapters 323 and 324, Laws of Maryland 2002, codified at Commercial Law Article §§14-3001 through 14-3003, restrict the transmission of certain commercial electronic mail from a computer in Maryland, or to an e-mail address that the sender knows or should know is located in Maryland.

Q1: Do the Utah and West Virginia statutes raise constitutional issues?

Answer: The identification requirement in the West Virginia statute, as well as Utah's more far-reaching identification requirement, could constitutionally be applied to commercial bulk

electronic messages, but probably not to non-commercial bulk e-mail. The West Virginia bar on the bulk electronic transmission of sexually explicit messages, if administered without regard to obscenity, would likely be found unconstitutional. The Utah subject line requirement is likely valid as applied to all commercial e-mail, as well as to sexually explicit material even when it is non-commercial. The Utah cut-off requirement is likely constitutional, but the requirement that the sender's toll-free number be made available to cut off a sexually explicit e-mail might be objectionable as more burdensome than necessary.

Q2: How do the Utah and West Virginia statutes compare with the Maryland legislation?

Answer: To the extent that the Maryland provisions differ from those of the Utah and West Virginia laws, they are generally superior. This office has approved the Maryland provisions for constitutionality and legal sufficiency.

*Letter to
Senator Paula C. Hollinger
September 9, 2002*

EMINENT DOMAIN) HOSPITALS

Question: Can the City of Hagerstown condemn property within the City's corporate limits in order to transfer the property to the Washington County Hospital Association for construction of a new hospital, including appurtenant and accessory structures, adjacent to the hospital's current location?

Answer: Yes.

*Letter to William M. Breichner
Mayor, City of Hagerstown
July 17, 2002*

FEDERAL GRANTS

A memorandum prepared by the Chief Counsel, Opinions and Advice, summarizes

various laws and regulations that govern the use of federal grants from the United States Department of Justice by the Governor's Office of Crime Control and Prevention.

*Memorandum to
J. Joseph Curran, Jr.
September 10, 2002*

FOOD BANK DONATIONS – LIABILITY

Question: What liability issues should food donors consider when donating food or grocery products to food banks?

Answer: Both federal and State law protect from liability those who donate food to food banks, when the donors act without gross negligence or intentional misconduct. Federal law precludes both civil and criminal liability, while State law prevents only civil liability. In addition, case law suggests that suits against food donors are extremely rare.

*Letter to
Senator Donald F. Munson
August 20, 2002*

HOME RULE CHARTER REVISION

Question: Is a board of county commissioners authorized to revise a proposed county charter presented to the commissioners by a charter board?

Answer: Under Article XI-A of the State Constitution, the adoption of a charter may be initiated either by a petition of county voters or by the board of county commissioners. The power vested in the commissioners, however, does not include the authority to revise a charter drafted by and presented to the commissioners by a charter board.

*Letter to
W. Thomas Merryweather, Esq.
County Attorney for Dorchester County
August 8, 2002*

**PROGRAM OPEN SPACE –
CONSERVATION EASEMENTS**

Question: Do provisions in the law governing Program Open Space that reference “land acquisition” allow the acquisition of property interests less than fee simple interests, such as easements? May the property or property interests acquired under Program Open Space and the Green Print Program be donated to conservation organizations?

Answer: The term “land acquisition” is not defined by the Program Open Space law. However, the term ordinarily includes not only fee simple ownership, but also lesser interests. Subject to the approval of the Board of Public Works, real property interests acquired under the Program Open Space and Green Print Programs may be donated to conservation organizations.

*Letter to
Delegate George C. Edwards
July 17, 2002*

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